

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

Summary

The Uniform Law Commission promulgated the **Uniform Interstate Depositions and Discovery Act** in 2007. The Act sets forth an efficient and inexpensive procedure for litigants to depose out of state individuals and for the production of discoverable materials that may be located out of state. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased.

Under the Uniform Interstate Depositions and Discovery Act, litigants can present a clerk of the court located in the state where discoverable materials are sought with a subpoena issued by a court in the trial state. Once the clerk receives the foreign subpoena, the clerk will issue a subpoena for service upon the person or entity on which the original subpoena is directed. The terms of the issued subpoena must incorporate the same terms as the original subpoena and contain the contact information for all counsel of record and any party not represented by counsel.

The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena is to comply with the rules of state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state.

WHY STATES SHOULD ADOPT THE UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

The Uniform Interstate Depositions and Discovery Act addresses the need for an efficient and inexpensive procedure that would allow litigants to depose individuals and conduct discovery in a state other than the trial state. The Uniform Act improves current state procedures in the following ways:

- **Efficient.** The clerk of court in the discovery state acts in a purely ministerial role, but in a manner that is sufficient to invoke jurisdiction of the discovery state over the deponent.
- **Inexpensive.** The Act eliminates the need for out of state litigants to obtain a commission or local counsel in the discovery state and file miscellaneous actions during discovery in order to subpoena individuals located outside the trial state.
- **Minimized Judicial Oversight.** Under the Act, there is no need to present the matter to a judge in the discovery state before a subpoena can be issued.
- **Clear rules governing discovery.** Discovery permitted by the Act must comply with the laws of the discovery state. The Act recognizes that the discovery state has a significant interest in protecting its residents who become non-party witnesses in an action pending in a foreign jurisdiction from unreasonable or burdensome discovery requests. Moreover, all motions to quash or modify a subpoena must comply with the law of the discovery state.



Uniform Law Commission

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Legislative Fact Sheet - Interstate Depositions and Discovery Act

Act Interstate Depositions and Discovery Act	
Origin	Completed by the Uniform Law Commission in 2007.
Description	Provides simple procedures for courts in one state to issue subpoenas for out-of-state depositions.
Endorsements	
Enactments	California, Colorado, Delaware, District of Columbia, Idaho, Indiana, Kansas, Kentucky, Maryland, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Oregon, South Carolina, Tennessee, Utah, Virginia
2012 Introductions	Alabama, Arizona, Connecticut, Georgia, Hawaii, Michigan, North Dakota, Pennsylvania, South Dakota, Vermont, Washington
Staff Liason(s)	Eric Fish

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Power of Attorney | Out-of-State Subpoenas

Nevada's Uniform Interstate Depositions and Discovery Act

Understanding Out-of-State Subpoenas

From time to time, attorneys get calls from clients who have just received scary-looking subpoenas "commanding" them, in ALL CAPS, to produce documents in legal proceedings pending in other states. These subpoenas often seem, at first blush, to have nothing to do with the client. Sometimes the subpoena seeks employment records of current or former employees; at other times it may seek information on the client's processes, procedures and even confidential client lists. One thing they all have in common: subpoenas threaten dire legal consequences if compliance is not thorough and swift.

But does an individual or company in Nevada have to comply with an out-of-state subpoena involving a matter pending in another state's courts to which the client is not a party? After all, the client is not a party to the lawsuit, and may not have operations in the state from which the subpoena was issued. Does the client really have to respond to this pesky subpoena from North Dakota?

Beginning October 1, 2011 the answer in Nevada will be "yes," but only if the subpoena complies with Nevada's New Uniform Interstate Depositions and Discovery Act (2011 AB 97) and with Rule 45 of the Nevada Rules of Civil Procedure.

Proposed in 2007 by the National Conference of Commissioners on Uniform State Laws, the Uniform Interstate Depositions and Discovery Act was drafted in response to criticism that prior uniform foreign discovery acts were incomplete and out-of-date. In drafting the new proposed Uniform Act, the Commissioners paid special attention to the multiple functions of subpoenas: (i) to secure witness depositions; (ii) to obtain documents and other information; and (iii) to gain entry for the inspection of premises. While its two precursors (the Uniform Foreign Depositions Act and the Uniform Interstate and International Procedure Act) did address witness subpoenas and document production by non-parties, they were silent as to the inspection of premises and involved rather cumbersome procedures. It should come as no surprise then that the Uniform Foreign Depositions Act gained approval of only thirteen states (including Nevada), while the Uniform Interstate and International Procedure Act was ultimately adopted by only six states.

Wishing to create a uniform act allowing out-of-state subpoenas to be issued pursuant to "a procedure that can be easily and

efficiently followed, that has a minimum of judicial oversight and intervention, that is cost-effective for the litigants, and is fair to the deponents," the Commissioners relied heavily on Rule 45 of the Federal Rules of Civil Procedure.

The result? A relatively straightforward Uniform Act that allows attorneys handling lawsuits in other states to serve non-party discovery subpoenas efficiently on individuals and businesses located in jurisdictions that have adopted the Act.

Sponsored by Nevada Assemblyman Richard "Dick" Segerblom, a seasoned Nevada labor and employment attorney, the Act was passed by the Nevada Legislature and signed into law by Gov. Sandoval in March. In so doing, Nevada joined fifteen other states and the District of Columbia in enacting the Uniform Interstate Depositions and Discovery Act.

Once Nevada's Uniform Interstate Depositions and Discovery Act goes into effect on October 1st, answering the question, "Do I have to respond to this subpoena?" will become much more straightforward. Under the Act, an attorney practicing in another state's jurisdiction seeking to issue a subpoena in Nevada must first identify the county in which the discovery will be sought (i.e. the residence of a Nevada witness or the headquarters of a Nevada company). The "foreign" attorney (the Act defines the other 49 states, the District of Columbia and U.S. territories as "foreign") must then submit the subpoena to the clerk of the court for that county and request the clerk to "issue" the subpoena.

The Act directs the county court clerks to "promptly" issue a subpoena "for service upon the person to which the foreign subpoena is directed." This does not mean that the court itself serves the subpoena; rather, the subpoena will be issued by the court for the attorney to serve. No doubt the effective date of October 1st was designed to allow the clerks of the various county courts time to prepare their own forms and local procedures for processing foreign subpoenas – including, no doubt, court fees.

One potential plus for lawyers in Nevada: once Nevada attorneys become familiar with Nevada's new procedures for processing out-of-state subpoenas under the Uniform Act, it will make it that much easier to conduct non-party discovery in the other jurisdictions that have passed their own versions of the Uniform Interstate Depositions and Discovery Act.

Jeffrey D. Winchester, Partner, Jackson Lewis LLP

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